

REMARKS

Favorable reconsideration and allowance of the Claims of the present application are respectfully requested.

Applicants have carefully considered the Office Action mailed on February 13, 2009. Of the pending claims, the Office Action rejected Claims 18, 21 and 22 under 35 U.S.C. §102 as allegedly anticipated by GenBank accession number AA10156 (hereinafter, “GenBank reference”).

Applicants respectfully submit new claims 23-31 for examination. Claim 23 is directed to, *inter alia*, the nucleotide sequence selected from the group consisting of SEQ ID NO: 1 encoding an amino acid sequence selected from the group consisting of SEQ ID NO:3 and amino acid residues 28-299 of SEQ ID NO:3. Claim 24 is directed to, *inter alia*, the nucleotide sequence selected from the group consisting of SEQ ID NO: 1 encoding an amino acid sequence selected from the group consisting of SEQ ID NO:3 and amino acid residues 28-299 of SEQ ID NO:3. Claim 25 is directed to, *inter alia*, the nucleotide sequence selected from the group consisting of SEQ ID NO: 1 encoding an amino acid sequence selected from the group consisting of SEQ ID NO:3 and amino acid residues 28-299 of SEQ ID NO:3. Claim 26 is directed to, *inter alia*, the nucleotide sequence selected from the group consisting of SEQ ID NO: 1 having at least 95% amino acid identity to SEQ ID NO:3 and amino acid residues 28-299 of SEQ ID NO:3. Claim 27 is directed to, *inter alia*, the nucleotide sequence selected from the group consisting of SEQ ID NO: 1 having at least 95% amino acid identity to SEQ ID NO:3 and amino acid residues 28-299 of SEQ ID NO:3. Claim 28 is directed to, *inter alia*, the nucleotide sequence selected from the group consisting of SEQ ID NO: 1 having at least 95% amino acid identity to SEQ ID NO:3 and

amino acid residues 28-299 of SEQ ID NO:3. Claim 29 is directed to, *inter alia*, the nucleotide sequence selected from the group consisting of SEQ ID NO: 1 having at least 99% amino acid identity to SEQ ID NO:3 and amino acid residues 28-299 of SEQ ID NO:3. Claim 30 is directed to, *inter alia*, the nucleotide sequence selected from the group consisting of SEQ ID NO: 1 having at least 99% amino acid identity to SEQ ID NO:3 and amino acid residues 28-299 of SEQ ID NO:3. Claim 31 is directed to, *inter alia*, the nucleotide sequence selected from the group consisting of SEQ ID NO: 1 having at least 99% amino acid identity to SEQ ID NO:3 and amino acid residues 28-299 of SEQ ID NO:3.

No new matter has been added by way of the aforementioned Claim additions. For example, Applicant directs the Examiner's attention to page 29 lines 12-28 of the present application. Applicant submits that the identified sections are presented only for the Examiner's convenience and is not intended to be an exhaustive list of support.

In view of the following remarks, Applicants request further examination and reconsideration of the present patent application.

Rejections under 35 U.S.C. §102

Claims 18, 21 and 22 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by the GenBank reference.

The GenBank reference teaches a specific, structurally definable compound. The Official Action correctly states that SEQ ID NO:1 is only 74.5% identical to SEQ ID NO:2, which is 99.2% identical to the molecule in the GenBank reference. Therefore, out of a sequence of 897 nucleotides in SEQ ID NO:1, the GenBank reference is identical to 663 nucleotides (897*74.5%*99.2%). Therefore, the GenBank reference is not identical to 234 nucleotides in SEQ ID NO:1.

Anticipation is established only if each and every element of a properly construed claim is found, either expressly or inherently described, in a prior art reference. *PPG Indus., Inc. v. Guardian Indus. Corp.*, 75 F.3d 1558, 1566 (Fed. Cir. 1996). The GenBank reference does not expressly or inherently describe each and every nucleotide of the SEQ ID NO:1, and therefore can not anticipate the claimed invention.

Further, the GenBank reference does not render the claimed invention obvious. The prior art must suggest making the specific molecular modifications necessary to achieve the claimed invention. *Ex Parte Deuel*, 51 F.3d 1552, 1557 (Fed. Cir. 1995). Further, any motivation or suggestion to modify the prior art references must flow from some teaching in the art that suggests the desirability or incentive to make the modification needed to arrive at the claimed invention. *In re Napier*, 55 F.3d 610, 613 (Fed. Cir. 1995).

The GenBank reference does not suggest making any specific molecular modifications necessary to achieve the claimed invention, especially not making any suggestion to modify 234 nucleotides to achieve the sequence of the claimed invention. Further, the GenBank reference does not provide any motivation or suggestion of the desirability or incentive to make the modification of the 234 nucleotides needed to arrive at SEQ ID NO:1.

New Claims 23-31 are patentable over the GenBank reference for at least the reason that the GenBank reference does not disclose a second amino acid sequence selected from the group of SEQ ID NO:3 and amino acid residues 28-299 of SEQ ID NO:3. Further, it would not have been obvious to one of ordinary skill in the art to make a second amino acid sequence because there would be no motivation based on the teaching of the GenBank reference to make the specific second amino acid sequence of SEQ ID NO:3 or amino acid residues 28-299 of SEQ ID NO:3.

Applicants respectfully request withdrawal of the rejection of claims 18, 21 and 22 under 35 U.S.C. §102(b). It is further respectfully submitted that claims 18 and 21-22 are in condition for allowance.

For the reasons set out above, Applicants respectfully submit that the application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are respectfully requested. Should the Examiner believe that anything further is needed to place the application in even better condition for allowance, the Examiner is requested to contact the Applicants undersigned representative at the telephone number below.

Respectfully submitted,



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